BILLS AND NOTES—RIGHT OF INDORSEE TO RECOVER FACE VALUE WHEN HE HAS PAID LESS THAN THAT AMOUNT.—In an action by the indorsee on a check for $3000, the court instructed the jury to return a verdict for $797.80 which was the amount the indorsee had paid thereon. *Held,* the instruction was erroneous. The amount paid for the check is immaterial, and the indorsee is entitled to recover the full amount. *First Nat. Bank of Canyon* v. *Abernathy* (Texas 1913) 153 S. W. 349.

The question presented in this case is one of the many which have been set at rest by the Negotiable Instruments Law. Before the passage of that law the decisions were in conflict on the point involved. The United States Supreme Court, followed by many state courts, held that a holder in due course is entitled to recover the full amount of the negotiable security from the maker though he may have paid less than its par value. *Cromwell* v. *County of Sac,* 96 U. S. 51; *Vinton* v. *Peck,* 14 Mich. 286; *McNamara* v. *Jose,* 28 Wash. 461; *Murphy* v. *Lucas* 58 Ind. 360; *Bank of Michigan* v. *Green,* 33 Ia. 140. But this rule has not met with unanimous approval. Opposed to it are the following cases: *Holcomb* v. *Wyckoff,* 35 N. J. L. 35; *Bank* v. *McNair,* 116 N. C. 550; *Harger* v. *Wilson* 63 Barb. 237; *Oppenheim* v. *Farmers & Mechanics Bank,* 97 Tenn. 19. The Negotiable Instruments Law provides for the point in accord with the holding of the United States Supreme Court. In *Mersick* v. *Alderman,* 77 Conn. 634, the right of a holder in due course to recover the full amount was recognized, but it was held that one who takes negotiable paper as collateral security for a debt will be limited in his recovery to the amount of the debt. In accord with the Connecticut case are the following authorities: *Stoddard* v. *Kimball,* 6 Cush. (Mass) 469; *Allaire* v. *Hartshorne,* 1 Zab. 665; *Williams* v. *Smith,* 2 Hill (N. Y.) 301; *Lay* v. *Wiseman,* 36 Iowa 305.

BILLS AND NOTES—WHAT AMOUNTS TO ACCEPTANCE.—M. executed an order payable to the plaintiff and addressed to the defendant bank, directing the bank to pay to the plaintiff the balance of M.'s account. The order was presented to the bank, but the bank retained it until after M.'s death, and then refused to pay it. *Held,* the mere retention by the drawee of an order to pay the money is not an acceptance. *Foley* v. *New York Savings Bank,* (N. Y. 1913) 139 N. Y. Supp. 915.

The Negotiable Instruments Law provides that "where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same." The principal case is in accord with the construction placed upon this section of the statute. *State* v. *Weiss,* 91 N. Y. Supp. 276; *Westberg* v. *Chicago L. and C. Co.,* 117 Wis. 589. In the Wisconsin case the court said that "there seem to be two phases of conduct recognized by the authorities as charging the drawee: one purely contractual, as where the retention is accompanied by such custom, promise, or notification as to warrant the holder, to the knowledge of the drawee, in understanding that the retention declares acceptance; the other, where

the conduct of the drawee is substantially tortious and amounts to a conversion of the bill". This is a reiteration of the common law rule that mere retention of the bill is not acceptance. *Overman* v. *Hoboken City Bank,* 31 N. J. L. 563; *First National Bank* v. *McMichael,* 106 Pa. St. 460; *Bank of the Republic* v. *Millard,* 10 Wall. 152. In *Rousch* v. *Duff,* 35 Mo. 312, it was held that mere holding of the bill beyond the time specified does not amount to an acceptance, even though accompanied with a promise to pay it. The consensus of authority is that the duty rests on the holder to demand either acceptance or return of the bill and that mere inaction on the part of the drawee has no effect. *Mason* v. *Barff,* 2 B. & Ald. 26; *Colorado Nat. Bank* v. *Boettcher,* 5 Colo. 185.

CONSTITUTIONAL LAW—LEGISLATION TO VALIDATE A DEFECTIVE MUNICIPAL ELECTION.—Article 9, § 8 of the Constitution of Pennsylvania provides that a borough cannot increase its indebtedness to an amount exceeding two per centum of the assessed valuation of property located therein, "without the assent of the electors thereof at a public election in such manner as shall be provided by law." The borough of Carlisle held such an election, but certain statutory requirements were not observed. Subsequently the legislature passed an act the intent of which was to validate all such elections. On a bill in equity to enjoin the issuing of municipal bonds in pursuance of this election, this validating or curative act was held constitutional by a divided court, three judges dissenting on the ground that as the election was void it could not be revived and made legal, and on the further ground that the curative act was an attempt to do indirectly what could not be done directly, namely, to except the borough of Carlisle from the requirements of the general election laws. *Swartz* v. *Borough of Carlisle* (Pa. 1912) 85 Atl. 847.

The weight of authority seems to be that "a retrospective statute curing defects in legal proceedings, when they are in their nature irregularities only, and do not extend to matters of jurisdiction, is not void on constitutional grounds, unless expressly forbidden." COOLEY, CONST. LIM. (6th Ed.) 456, 457. *State* v. *Abraham,* 64, Wash. 621, 117 Pac. 501. Of this class are statutes to cure irregularities in assessment of property for taxation and "irregularities in the votes" of municipal corporations. *State* v. *Ballard,* 16 Wash. 418; *Steuebel* v. *Bell,* 161 Ind. 323; *Cole* v. *Dorr,* 80 Kan. 251, 22 L. R. A. N. S. 538. If the thing failing to be done might have been dispensed with by the legislature, subsequent retroactive legislation may dispense with it. *Johnson* v. *Board of Comm'rs,* 107 Ind. 15; *People* v. *Wis. Cent. Red.* 219 Ill. 94; *Allen* v. *Archer,* 49 Me. 346; *Lovejoy* v. *Beeson,* 121 Ala. 605; *Mason* v. *Spencer,* 35 Kan. 513. The details of a proceeding at the time defective, may be cured by retrospective legislative enactments. *Kimball* v. *Rosendale,* 42 Wis. 407. A void act—void because irregular—may be validated. *City of Oakland* v. *Oakland Water Front Co.,* 118 Cal. 160; *Shenck* v. *City of Jefferson,* 152 Ind. 204; An act done under an unconstitutional provision may be cured. *State* v. *Winter,* (Wash) 46 Pac. 644. The clear weight of authority is that curative acts are not special or local, within the constitutional